IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

THURSDAY, THE TENTH DAY OF NOVEMBER
TWO THOUSAND AND FIVE

PRESENT

**THE HON'BLE MR JUSTICE V.ESWARAIAH**

**WRIT PETITION No. 24027 of 2005**

Between:

M.Rajeshwara Rao

**..... PETITIONER**

AND

The Jubilee Hills Co-operative House Building

Society Ltd., rep.by R.Ramakrishnaiah and another

.....**RESPONDENTS**

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**ORDER:**

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Seeking a Mandamus, declaring the action of the 1st respondent in not considering the representation of the petitioner submitted on 02.09.2005 pursuant to the orders of the 2nd respondent in ARC No.5 of 2004, dated 05.07.2005 and collecting the value for the excess land measuring 581 sq.yards in plot No.178 situate in Jubilee Hills, Hyderabad as shown in the sale deed No.1855 of 1986 as per Resolution of the General Body meeting under Item No.10(1) of the minutes, as bad, illegal and arbitrary, the present writ petition is filed.

Heard the learned counsel for the petitioner and the learned Government Pleader for Cooperation.

It is stated that the 1st respondent society executed a registered sale deed dated 02.08.1986, under document No.1855 in respect of plot No.178, situated in Sy.No.Old 403/1 (New No.120) of Shaikpet and Sy.No.102/1 of Hakimpet villages within the limits of the Municipal Corporation of Hyderabad with Ward No.8, Block

No.2 admeasuring 1834 sq.yards/1535 sq.mtrs., bounded by

North-Plot No.186; South-50' wide Road No.13; East-Plot No.177 and West-50' wide Road No.15. The measurements of the said plot have been mentioned in the layout as 160 feet on the North, 150 feet on the South, 115 feet on the East and 98 feet on the West.

It is stated that the 1st respondent society issued a notice dated 15.06.2004 stating that there is some open space adjacent to the plot of the petitioner, admeasuring 581 sq.yards belonging to the society, and the petitioner is only owner of 1834 sq.yards and it is found that the petitioner has been constructing a compound wall by encroaching the site of the 1st respondent society and hence requested the petitioner to stop further construction of the compound wall as the petitioner has no right over the said excess land. Aggrieved by the said notice, the petitioner invoked arbitration proceedings under Section 61 of the A.P.Cooperative Societies Act 7 of 1964 before the Arbitrator on 21.06.2004, seeking a direction restraining the 1st respondent society from interfering with his peaceful possession and enjoyment of his plot No.178 situated within the boundaries mentioned in the sale deed.

It is the case of the petitioner that he has constructed a compound wall over his plot and the notice issued by the 1st respondent society with regard to excess vacant land of 581 sq.yards is illegal and incorrect, and the said land also belongs to the petitioner. It is the case of the 1st respondent society is that the petitioner has illegally encroached into the adjacent vacant land belonging to the society and occupied to an extent of 581 sq.yards excess land. It is further stated that the General Body of the 1st respondent in its General Body Meeting dated 27.03.2005, with regard to allotment of excess land over and above allotted area, and in respect of allotment of adjacent stray bits, passed two resolutions in Item No.10, which reads as follows:

1. In case, the actual allotted land is more than the registered area and if it tallies with the measurements given in the M.C.H. approved layout, the balance area (actual allotted area-Registered area) may be registered in favour of the allottee at the original rate at which the land was registered;
2. In respect of cases, where excess land is available in the plot over and above the allotted area or as stray bits of land adjacent to the allottees plot and is of irregular shape and not fit to be an independent plot such excess land or stray bit be allotted to the

adjacent plot owner at prevailing Government market value, subject to approval of measurement changes of the plot, in the layout by M.C.H;

In the Arbitration Case No.5/2004/H1, the Arbitrator, by his order dated 05.07.2005, directed the petitioner to approach the Jubilee Hills Cooperative House Building Society for redressal of his grievance in view of the decision taken by the General Body Meeting of the 1st respondent society held on 27.03.2005.

It is stated that pursuant to the said arbitration proceedings, the petitioner made a representation dated 02.09.2005 before the Member Secretary of the 1st respondent society, but the 1st respondent society has not considered and disposed of the said representation, in spite of disposal of earlier W.P.No.20442 of 2004, which was dismissed as infructuous.

Having regard to the facts and circumstances of the case, I deem it just and proper to direct the 1st respondent society to consider and dispose of the representation of the petitioner dated 02.09.2005, in accordance with law, after giving a reasonable opportunity to the petitioner, within a period of four weeks from the date of receipt of a copy of this order.

Accordingly, the Writ Petition is disposed of. No order as to costs.

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**V.ESWARAIAH,J**

Dated: 10.11.2005

Dsr

**Note:**

**Issue CC in two days**

**B/o**

**Dsr**